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civil status acts, the same diplomatic motives could, anyhow, not be seriously invoked, and from the juridical point of view, it is inadmissible that civil status officers, no matter what their attributions in other respects, should claim the right to rid themselves of their professional obligations. The decision of the Court of Conflicts must, therefore, be approved in all points.

THE CERRUTI ARBITRATIONS¹

For twenty-five years, from 1885 to 1911, the Cerruti case in its various phases was a thorn in the side of Colombia and Italy; diplomatic relations between the two countries were severed at times by reason of this case, and on at least two occasions Italian warships prowled in Colombian waters and forced compliance with Italian demands. The case itself was referred to the mediation of Spain, a mixed commission sat at Bogotá for its consideration, the President of the United States rendered an award in 1897, twelve years after the difficulty arose, but the case dragged on for a second period, this time some fourteen years, until it was finally settled, it is to be hoped, by the award of an arbitral commission at Rome on July 6, 1911.

The miserable affair is perhaps the best argument that could be made for a true permanent court composed of judges and permanently in session, for the questions were purely legal and could have been referred at the very beginning to an international court if one had existed in 1885, and the court could have rendered a decision in the course of a few months by the application of a few principles of law, thus saving Colombia from the humiliation of naval pressure and Italy from the greater humiliation of coercing a weaker state, for, in the language of John Bright, "force is no argument."

However, the purpose of the present comment is neither to commend nor to censure one party at the expense of the other, for neither seems wholly free from blame, but briefly to state the case with reference to the documents printed elsewhere in the JOURNAL, so that the reader can obtain a tolerably clear notion of the facts and principles involved and satisfy himself that the dispute was a proper one for a court of law. The

¹ See Bureau's *Conflit Italo-Colombien (Affaire Cerruti)*, 1899 (strongly Colombian); Darras' *Certains Dangers de l'arbitrage international* in the *Revue générale de droit International Public*, for 1899, pp. 533-552; Hagerup's *Affaire Cerruti — Sentence Arbitrale* de 6 Juillet 1911, *ibid.*, 1912, pp. 268-274.

dispute is the familiar one of a foreigner settling in a Latin-American country, engaging in business, followed by the arrest of his person and the confiscation of his property for alleged complicity in a revolution. The home government espouses the cause of its subject; adequate reparation is refused; diplomatic relations are severed, good offices or mediation are tried until, finally, the case, which has thus assumed threatening proportions, is submitted to arbitration and decided or compromised many years after the event.

One Ernesto Cerruti, an Italian subject, emigrated to Colombia in 1869, settled in the State, now department, of Cauca, associated himself in business with men of local influence under the firm name of E. Cerruti & Company. In January, 1885, a revolution broke out in Cauca in which the Colombian associates of Cerruti were implicated, and in February the State of Cauca, accusing Cerruti of unneutral conduct, confiscated his personal property as well as the entire property of E. Cerruti & Company, not merely the interest which Cerruti may have had in the firm.

The questions involved in this action were questions of fact and of law. First, had Cerruti forfeited protection by taking part directly or indirectly in the revolution? Second, supposing that he was properly taxed with unneutral conduct, did his personal guilt, supposing it proved, authorize the State to confiscate the firm's property as a whole or only Cerruti's share in it? And, finally, was the firm, as a Colombian entity, subject to the law of its domicile, or was it a foreign person by reason of Cerruti's Italian nationality? These latter are, it would seem, purely legal questions, susceptible of determination by a court of justice.

Admitting that the confiscation of the firm's property in its entirety was illegal, the question at once arises whether Cerruti's rights as a member of the firm, admittedly Colombian, were to be determined by Colombian law, as would be the case with any purely domestic firm, or whether his foreign nationality permitted him as a matter of law to invoke the intervention of Italy before local remedies were exhausted, resulting in either a denial of justice or such a delay as might in the circumstances amount to a denial of justice? Colombia denied the right of diplomatic intervention; Italy claimed it, and the presence of an Italian warship complicated a situation sufficiently complicated. Diplomatic relations were severed; but, through the good offices of Spain, a protocol was concluded at Paris on May 24, 1886, by which Spain was asked and actually did perform the services of mediator.

Colombia agreed to restore to Cerruti, or his representative, the possession of the real property seized by the Colombian authorities, immediately upon the ratification of the convention. The following questions were submitted to the mediator: Has Cerruti or have the other Italian subjects forfeited their foreign neutral character? Have they lost the rights, prerogatives or privileges granted by the common law or the laws of Colombia? And, finally, should Colombia pay an indemnity to Cerruti and the other Italian subjects?² It was further provided that in case of a finding against Colombia, the dispute should be submitted to a mixed commission, composed of a Spanish, Italian and Colombian representative, who should meet at a specified time at Bogotá and decide the question finally and without appeal.

The mediator found against Colombia on January 26, 1888.³ The mixed commission met at Bogotá September 5, 1888, but adjourned March 23, 1889, without passing upon the question, as Cerruti refused to submit his case, alleging partiality of the commission, as well as other grounds. In 1892 Colombia invested its Supreme Court with jurisdiction to try and decide the case, but Cerruti failed to appear within the two years allowed for the proceedings. After further delay, Colombia and Italy agreed to the so-called protocol of Castellamare, signed August 18, 1894, to submit the case to the President of the United States as arbiter, investing him with full power, it would seem, to terminate the case once and for all. Mr. Cleveland, then President, accepted the invitation to arbitrate, and on March 2, 1897, two days before the end of his term, rendered an award.⁴

A great deal of stress has been laid on the fact that the award was handed down two days before Mr. Cleveland's retirement from office, a fact of little or no importance in itself, but pressed into service as showing or tending to show undue haste. The serious objection to the award is that it was made by a chief magistrate, instead of by a body of jurists, and that, as often happens in submissions to chief magistrates, whether kings or presidents, no reasons were given for the award. Had it been acceptable to the states in controversy, it would have settled

² See the text of the convention, SUPPLEMENT p. 238.

³ See JUDICIAL DECISIONS, this JOURNAL, p. 1003.

⁴ For text of this instrument see JUDICIAL DECISIONS, this JOURNAL, p. 1015. For a scathing criticism of the award, see Pierantoni's "Nullité d'un arbitrage international" in the *Revue de droit international et de législation comparée* for 1898, Vol. XXX, pp. 445 *et seq.*

the dispute, but as it was in favor of Italy and against Colombia, and as the reasons for the findings were a matter of conjecture, the award, instead of ending the dispute, seems to have rendered it more acute, if possible.

President Cleveland held that Cerruti's claims in his dual capacity as an individual and member of the firm of E. Cerruti and Company "are proper claims for international adjudication." This decision may have been proper, but the absence of reasoning deprives it of any great value as a precedent.

President Cleveland next rejected Cerruti's claims for "personal damages resulting from imprisonment, arrest, enforced separation from his family, and suffering and privations endured by himself and family" — a holding right or wrong according to the facts, circumstances and principles of law applied, none of which, however, are stated in the award. In like manner Cerruti's claim for expenses incurred in the present and past proceedings is disallowed, which may or may not have been proper.

The fourth holding follows in President Cleveland's language:

I award for losses and damages to the individual property of Signor Ernesto Cerruti in the State of Cauca, and to his interest in the copartnership of E. Cerruti and Company, of which he was a member, including interest, the net sum of sixty thousand pounds sterling, of which sum ten thousand having been already paid, the Government of the Republic of Colombia will, in addition, pay the Government of the Kingdom of Italy, for the use of Signor Ernesto Cerruti, ten thousand pounds sterling thereof within sixty days from the date hereof, and the remainder, being forty thousand pounds, within nine months from the date hereof, with interest from the date of this award at the rate of six per cent per annum, until paid, both payments to be made by draft, payable in London, England, with exchange from Bogotá at the time of payment.

Admitting that reasons for the decision were not necessary, this part of the decision settled the question, although a difference of opinion arose between Colombia and Italy regarding the manner of payment, which President McKinley was asked by both parties to pass upon but refused owing to the fact that the President was *functus officio* and could not "revive the personal character of arbitrator which his predecessor discharged by the rendition of his award."⁵

Colombia accepted the Cleveland award on the preceding points,

⁵ See the correspondence on this point in *Foreign Relations of the United States* (1898), pp. 251-273.

although it sought to make its acceptance conditional upon a modification of Article V, a revision of which it urged President McKinley to undertake upon a joint request from Colombia and Italy, in which request Italy refused to join. The attitude of the United States is set forth in the following passage in a note from Secretary Sherman:

The President of the United States, whether he be the individual who acted as arbitrator or his successor in office, became, under any circumstances, *functus officio*, so far as the arbitration was concerned, upon the rendition of his award, and could not undertake to reopen the arbitration and reconsider the award under any just view of the powers conferred upon him as arbitrator by the protocol under which he acted. Should the parties to the arbitration invite the reconsideration of the award in question, in whole or part, or request its interpretation in any respect, that could only be accomplished by a new submission and arbitration.⁶

Finally, President Cleveland held Cerruti to be "entitled to enjoy and be protected in the net sum awarded him hereby," and, to prevent future difficulties or misunderstandings, decided and adjudged to Colombia "all rights, legal and equitable, of the said Señor Ernesto Cerruti in and to all property, real, personal, and mixed, in the Department of Cauca, and which has been called into question in this proceeding." That is to say upon payment of £60,000 Colombia was to be subrogated to the rights of Cerruti in the Department of Cauca. In the next clause of the same paragraph of the award, Colombia was subrogated to the duties which might spring out of the rights assigned or conveyed in the preceding part of the award. Thus, "I further adjudge and decide that the Government of the Republic of Colombia shall guarantee and protect Signor Ernesto Cerruti against any and all liability on account of the debts of the said copartnership, and shall reimburse Signor Ernesto Cerruti to the extent that he may be compelled to pay such bona fide copartnership debts only established against any proper defences which could and ought to have been made, and such guaranty and reimbursement shall include all necessary expenses for properly contesting such partnership debts."

Against this part of the award, Colombia protested vigorously, alleging that it was "outside of the submission of the protocol," and for the further reason that it did not "determine and declare any amount of indemnity" which the claimant was entitled to receive from Colombia through diplomatic channels; that it was not a final disposition of the claim or claims; that it imposed an uncertain liability the amount of

⁶ Mr. Sherman to Señor Rengifo, For. Rel. of the U. S. 1898, p. 251.

which was not determined by the award; that it provided "a prolific source of disagreements growing out of the claims" which the award was to end, and that it was a delegation of the President's authority to persons or tribunals not "named in the protocol nor specifically provided for in the award" to determine the liability of Colombia.⁷

The refusal or delay of Colombia to accept and comply with the award in its entirety as demanded by Italy, was ended by the appearance of an Italian fleet in Colombian waters in the summer of 1898, and an ultimatum, dated July 22, 1898, from the commander of the fleet, that the indemnities awarded Cerruti be paid to the Italian Government according to its interpretation of the award, and that measures be taken by Colombia within three months, afterward extended on August 13th to nine months, to protect Cerruti against suits by his creditors.⁸

This ended the first episode in the Cerruti case, a controversy which could easily have been adjusted if referred to an international court, had one existed, or which could and should have been settled by a properly reasoned award in 1897.

Delay in the payment of some of the sums to which Cerruti was entitled under the award, the failure to settle with the creditors of the partnership in accordance with Article 5 of the award, to save Cerruti harmless from partnership claims and to reimburse him for expenses in contesting partnership claims, led to serious differences of opinion between Colombia and Italy, to adjust which the two countries agreed on October 28, 1909, to arbitrate all outstanding controversies arising out of the Cerruti case. Arbitration was had and the award was rendered July 6, 1911, which will end, it is hoped, a controversy which has embittered the foreign relations of Colombia and Italy.

It will be recalled that President Cleveland awarded the lump sum of 60,000 pounds sterling to Cerruti in full satisfaction of his claims against the Colombian Government, and directed Colombia to protect him from any claims against him as member of the firm of E. Cerruti & Co. It may well be that a difference of opinion might exist as to whether a particular item was in reality a partnership debt or a personal liability of Cerruti, for which the partnership firm was in nowise responsible, and, as a matter of fact, such differences of opinion did arise and various suits were brought to enjoin the Italian Government from paying Cer-

⁷ See Señor Rengifo's notes to Messrs. Olney and Sherman, dated respectively, Washington, March 3, May 1, 1897, in *For. Rel. of U. S.* (1898), pp. 246-249.

⁸ See correspondence in Bruneau's *Conflit Italo-Colombien*, pp. 115-125.

ruti the sums to which he was entitled under the Cleveland award, until the questions at issue between Cerruti and his creditors had been adjudicated. As Article 5 of President Cleveland's award subrogated the Colombian Government to the rights and obligations of the Cerruti partnership, the Colombian Government entered into negotiations with its creditors, in order to settle the claims for which they could produce proper proof. It offered the creditors the amount of their claims plus twenty per cent in addition, in order to cover interest and expenses. A single creditor, one G. Mazza, refused to accept in satisfaction of his claim the face value in Colombian money of the date of payment, increased by twenty per cent, and although the amount offered to Mazza was increased by forty per cent, he still refused, claiming that he should be paid in gold. The offer was dated February 8, 1899, and in September of the same year, after Mazza's refusal, the Colombian Government deposited the sum of 22907.22½ *pesos* with the British Minister at Bogotá, who, in the absence of an Italian minister, was acting for the Italian Government. Mazza was apparently as unwilling to compromise his rights as he was vigilant in enforcing them. Thus, in April, 1897, within a month after the Cleveland award, he brought suit to attach the 50,000 pounds sterling which the Italian Government received under the Cleveland award as trustee of Cerruti. After years of litigation, on March 24–April 1, 1902, the court of appeals of Perugia condemned Cerruti, both as partner and as personal debtor, to pay to Mazza the sum of 181,359.46 *lire*. Cerruti claimed that the Mazza indebtedness was a partnership, not a personal, debt, and that therefore Colombia, not he, was responsible for it and the expenses incurred in defending the suit.

President Cleveland awarded, as has been stated, 60,000 pounds to Cerruti, including a sum of 10,000 pounds, which had been paid to Cerruti July 4, 1890. The sum of 10,000 pounds was to be paid sixty days from the date of the award, that is to say, on the first day of May, 1897, and to bear six per cent interest until paid. The balance, consisting of 40,000 pounds, was to be paid nine months from the date of judgment, that is to say, on December 2, 1897. Delays occurred in the payment of these sums and of interest upon them, which it is not material to note. Suffice it to say, as appears from the arbitral award of July 6, 1911, that in some instances Colombia recognized its obligation to pay interest, that in others it did not, and it maintained that Cerruti should be debited with interest on the sum of 10,000 pounds paid on July 4,

1890, which sum was included in the 60,000 pounds awarded by President Cleveland.

Again, Cerruti was, as has been mentioned, sued by various creditors for alleged partnership transactions or upon claims, for which it was alleged he was personally liable. In some instances the court took jurisdiction, maintaining that the sums held by the Italian Government as trustee were properly attachable; in others that they were not so attachable. It would appear that the indemnity could not properly be made liable for any claims arising out of the partnership transactions, for by President Cleveland's award Colombia was made responsible for the settlement of such claims, and the obligation was imposed upon Colombia by the Cleveland award to save Cerruti harmless and to reimburse him for expenses incurred in defending himself against claims of this nature. If claims against Cerruti had not arisen out of partnership debts or were not against him as a member of the firm, it might well be that the indemnity deposited with the Italian Government should be subject to attachment. This, however, would be a question of municipal law, of little or no interest to a foreign nation. As a consequence of this litigation, the Italian Government refused to hand over to Cerruti the money which it held in trust for him, until April 3, 1903, when it paid him the sum of 474,005 *lire* in gold, constituting the balance of the 50,000 pounds sterling then in the possession of Italy.

From this brief account it can be seen that President Cleveland's award, instead of settling the Cerruti claim, was but the beginning of a fertile source of contention. Thus, briefly to summarize, Cerruti maintained that Colombia was responsible for the Mazza claim, and that he should recover the amount of the judgment for which he had been declared judicially liable and which he paid as a matter of fact on April 3, 1903, the very day of the settlement with the Italian Government; second, that Colombia was indebted to him, Cerruti, in various sums, as interest on delayed payments of the indemnity to the Italian Government; and, third, that Colombia should reimburse him for the expenses to which he had been put in defending suits brought by creditors, to whom Colombia was, in his opinion, responsible. The Italian Government supported Cerruti's contentions, which, however, Colombia refused to accept. Finally, the two countries agreed to arbitrate the questions at issue, and on October 28, 1909, an agreement was concluded between Colombia and Italy submitting to arbitration the following questions:

1. What is the amount of the sum which the Government of Colombia has been obliged to pay and which it ought to pay by virtue of the claim of the late engineer, Gaspare Mazza, against Ernesto Cerruti & Co.

2. Among the delays that occurred in the payment to Ernesto Cerruti of the indemnity accorded to him by the Cleveland award, delays which the Government of Colombia admits in part, which should bear interest against the Republic and what is the amount of interest?

3. How much is due to the said Cerruti in conformity with and in execution of the last sentence of Article V of the arbitral award aforesaid and which in the English text is stated in the following terms: "Such guarantee and reimbursement shall include all necessary expenses for properly contesting such partnership debts"?

Pursuant to the agreement to arbitrate, the two governments appointed as arbiters Dr. Santiago Aldunate, Minister of Chile to Italy, and Professor Pasquale Grippio, Vice-President of the Italian Chamber of Deputies. The arbiters chose as umpire, in accordance with the powers conferred upon them by the agreement, Dr. Francis Hagerup, Minister Plenipotentiary of Norway. The commission thus composed met at Rome on April 24, 1911, determined its procedure, and directed that each party should deliver to the arbiters and to the opposite party memoirs, counter-memoirs and conclusions. This was done, the case was argued before the commission on June 28, 1911, and the unanimous judgment of the commission was rendered at Rome on July 6, 1911. The commission held that the Mazza claim was a claim against the partnership and that therefore Colombia should reimburse Cerruti for the amount of the judgment of the court of appeals of Perugia against him. In reaching this conclusion the commission not only carefully examined the circumstances attending the indebtedness, but printed in the award extracts from documents showing that the claim was in reality a partnership not a personal obligation. This holding was strengthened by the fact, already referred to, that on February 8, 1899, Colombia recognized the Mazza claim and offered to pay it, depositing for this purpose a certain sum of money with the British Minister at Bogotá, who represented Italy pending the rupture of diplomatic relations caused by the Cerruti case.

The commission allowed Cerruti simple, not compound, interest for the failure of Colombia to pay the various items of the indemnity of 50,000 pounds at the dates specified in President Cleveland's award. The commission did not allow any interest on the moneys from the date of payment to the Italian Government to April 3, 1903, when the balance of the indemnity was paid to Cerruti, for the very simple reason

that in the payment of the indemnity to Italy, Colombia had fulfilled its obligation and could not be taxed with responsibility for a delay on the part of Italy in transferring the money to Cerruti.

In deciding the third question, the commission found itself obliged to interpret President Cleveland's phrase concerning the guarantee and reimbursement of expenses. The arbiters held that "the Colombian Government, which in accordance with the said award assumed the responsibility of the entire indebtedness of the firm Ernesto Cerruti & Co., should reimburse all the expenses incurred in good faith by him, in order to establish in a definitive manner the extent of these obligations." Accepting this interpretation as correct, it would seem that Cerruti would only be entitled in strict law to reimbursement of the expenses incurred in defending the Mazza claim, as that was an obligation imposed upon Colombia by the Cleveland award. It would seem, in strict law, that Cerruti was not entitled under the Cleveland award to reimbursement of the sums expended by him in defending actions improperly brought against the fund or actions on claims which were not against the partnership as such or against him as a member of the partnership. The commission, however, found it difficult to distinguish between these various claims, and decided, no doubt wisely, to split the difference, by dividing between Colombia and Cerruti the expenses incurred in the various lawsuits, to which he had been a party.

The facts involved in this troublesome case are very complicated. It is believed, however, that if Mr. Cleveland had given reasons for his award, the controversy would have been decided in 1897 instead of perplexing the interested governments until the year 1911. The questions submitted were largely questions of fact, not questions of law. From the facts as stated in the award, it would appear that the commission decided properly the points of law involved. The Colombian Government was clearly not responsible for illegal attempts to attach the indemnity held in trust by Italy; yet it would be a hardship to compel Cerruti to bear all the expenses of the lawsuits improperly brought against the fund. Probably the commission felt that, inasmuch as Colombia was to blame in the first instance, it would only be equitable to require Colombia to pay at least a portion of these expenses. The commission was apparently authorized to compromise the case, because the award states specifically that it was authorized to decide as a court of equity. That the compromise was acceptable is apparent from the fact that the award is unanimous. It is to be hoped that the last word

has been said on the Cerruti case, which should have been, but was not, decided finally by President Cleveland in 1897.

FRÉDÉRIC PASSY

On July 22, 1908, Sir Randal Cremer, one of the founders of the Interparliamentary Union, died. On June 12, 1912, M. Frédéric Passy, Cremer's coadjutor in the founding of the Interparliamentary Union, passed away at Paris. They had both founded organizations in their respective countries for the peaceful settlement of international disputes; the *International Arbitration League* of the one, the *Société française pour l'arbitrage entre nations* of the other, exist. Their joint work, the Interparliamentary Union, with national groups in the various countries, international in fact as well as in theory, is firmly established and, wisely directed, is capable of rendering notable services to the world at large. They were both members of the parliaments of their respective countries, and they were both laureates of the Nobel Peace Prize, and their names are inseparably connected with national as well as international institutions, which they had the insight, the wisdom, and the honor to call into being. In another respect their careers were singularly alike, for a merciful Providence prolonged their years in order that they might see and enjoy the success of their labors.¹

Frédéric Passy was born at Paris on May 20, 1822, so that at the time of his death he had rounded out ninety years of a life devoted to the betterment of mankind. For many years he was chiefly interested in political economy, and brought to the peace movement the reputation of a sound and thoughtful economist. In 1867 he founded, with a group of friends, *La Ligue internationale et permante de la paix*, the title of which was afterward changed to *Société française des amis de la paix*, and which exists at present under the name of *La Société française pour l'arbitrage entre nations*. The Interparliamentary Union was due, as has been said, to the joint initiative of Sir Randal Cremer and M. Passy. It held its first meeting in 1888 at Paris, where it was definitely organized, and from 1889 it has regularly met. It was a singularly happy idea of the English workman and the French aristocrat and economist to organize a union composed of members of the different parliaments for the presence of a compact group of deputies, in every parliament, in

¹ For the career of Sir Randal Cremer, see the *AMERICAN JOURNAL OF INTERNATIONAL LAW* (1908), Vol. 2, pp. 858-862.